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U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Office of Cost &amp; Performance Management

800 Independence Ave, SW  
Washington, DC 20591

March 25, 2002

Dear Overflight Fee Customer:

I am writing to briefly update you on some recent developments and to explain certain actions that the FAA has taken or plans to take regarding the billing and collection of Overflight Fees.

The FAA charges Overflight Fees, as directed by Congress, for aircraft that fly through US-controlled airspace but neither takeoff nor land in the United States. These fees were established initially by an Interim Final Rule (IFR) on August 1, 2000. Soon after FAA imposed the fees, an air carrier association and seven carriers petitioned the Court of Appeals for the District of Columbia for review of the IFR.

On July 13, 2001, the Court issued an Opinion that would have stopped implementation of the IFR and would have led to a refund of all fees collected under that rule. The Court did not address the merits of the costing methodology underlying the IFR. It concluded, however, that the FAA had not explained a key assumption in that methodology. On that basis, the Court stated that it would "vacate" (i.e., strike down) the IFR and remand the case back to the FAA. Before that decision took effect, FAA issued a Final Rule that provided the missing explanation. Since the Final Rule addressed both the concerns of the Court and numerous public comments received on the IFR, FAA petitioned the Court to reconsider the vacating of the IFR. On December 28, 2001, the Court granted FAA's request by issuing an Order that modified the July 13<sup>th</sup> Opinion and left the Overflight Fees in place.

The Final Rule, issued and effective on August 20, 2001, reduced FAA's fees by about 15%, retroactive back to their original effective date of August 1, 2000. Shortly after the Final Rule was issued, the same group filed suit again in the Court of Appeals to stop these Overflight Fees as well. This legal challenge, by which the validity of the methodology that underlies both the IFR and the Final Rule will be determined, is currently pending before the Court. Also pending before the Court is a request by FAA for a short remand of the record in the Final Rule case. This would allow for the FAA to consider the impact on the Final Rule of recent legislation that modified the standard under which Overflight Fees are established. While these matters are pending, the FAA's Overflight Fees remain in effect and must be paid.

Several of you have asked how these ongoing activities affect our billing and collecting of Overflight Fees. There are several effects. As an Overflight Fee customer, you need to know the following:

1. Since the Court modified its July 13<sup>th</sup> Opinion, there will be **no refund of fees at this time.**

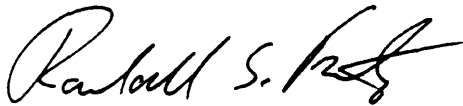
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2. While the litigation is pending, FAA will continue to bill and collect Overflight Fees under the Final Rule. **If you do not pay these bills on time, the FAA will pursue legal remedies available to it, including the charging of interest, late payment penalties, and administrative charges.**
3. Because of uncertainty following the original July 13<sup>th</sup> Opinion, the FAA has not billed for the 80-day period from June 1 through August 19, 2001. We have told the Court we will not bill for that period until the Final Rule litigation **has** been concluded. When that occurs, and assuming that the Court upholds the methodology that underlies both the IFR and the Final Rule, we will net the credits for overpayment of fees from August 2000 through May 2001 against amounts owed for the 80 days and bill for the net difference or issue credits **as** appropriate for each user.

As always, if you have questions related to billing and collections, you may either call **on** (202) 267-9598 or send an e-mail message to the following Internet address: 9-AWA-ABA-USER-FEES@faa.gov.

Sincerely,



Randall Fiertz  
Deputy Director, Office of  
Cost and Performance Management